

Internal Revenue Service  
**memorandum**

date: **AUG 30 1991**

to: Director, Internal Revenue Service Center  
Kansas City, MO  
Attn: Entity Control

from: Technical Assistant, Office of the Assistant Chief Counsel  
(Employee Benefits and Exempt Organizations)

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subject: CC:EE:3 - TR-45-1276-91  
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] is not an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(Signed) Ronald L. Moore

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RONALD L. MOORE

Attachment:

Copy of letter from Railroad Retirement Board

cc: Mr. Gary Kuper  
Internal Revenue Service  
200 South Hanley  
Clayton, MO 63105

**08629**

UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
844 RUSH STREET  
CHICAGO, ILLINOIS 60611

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BUREAU OF LAW

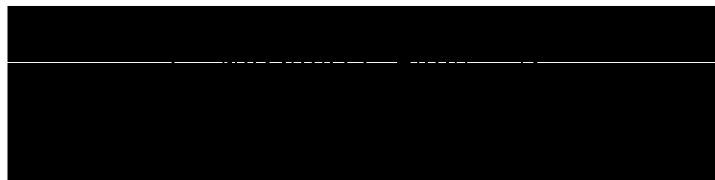
Assistant Chief Counsel  
(Employee Benefits and  
Exempt Organizations)  
Internal Revenue Service  
1111 Constitution Avenue., N.W.  
Washington, D.C. 20224

JUL 22 1991

Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,

A handwritten signature in cursive script.

Steven A. Bartholow  
Deputy General Counsel

Enclosure



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[redacted], with service creditable from [redacted] to date); and [redacted] with service creditable from [redacted] to date).

[redacted] stated that [redacted] performs only very limited administrative and tax services for its subsidiary railroad companies and that it performs no services for any other railroad companies. She stated that the staff of [redacted] spends substantially less than [redacted] of [redacted] % of their time on railroad business and that "substantially less than" [redacted] of [redacted] % of the total corporate revenue of [redacted] is derived from its railroads. [redacted] stated that no [redacted] employees report to or receive orders from employees of any railroad and that no [redacted] employees work alongside employees of any railroad.

Section 1 of the RRA defines the term "employer" to include:

"(i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49;

"(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad" (45 U.S.C. §231(a)(1)(i) and (ii)).

Section 1(a) of the RUIA (45 U.S.C. § 351(a)) contains essentially the same definition.

Section 202.7 of the Board's regulations provides that service is in connection with railroad transportation:

"\* \* \* if such service or operation is reasonably directly related, functionally or economically, to the performance of obligations which a company or person or companies or persons have undertaken as a common carrier by railroad, or to the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad." (20 CFR 202.7).

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Section 202.5 of the Board's regulations (20 CFR 202.5) defines a company under common control with a carrier as one controlled by the same person or persons which control a rail carrier. The Board has determined that a parent company may be under common control with its subsidiaries within the terms of this provision. See Appeal of Itel Corporation, Board Order 82-140, reversed on other grounds, Itel Corporation v. United States Railroad Retirement Board, 710 F.2d 1243 (7th Cir. 1983).

Based upon the information provided by [REDACTED], there is no question that [REDACTED] is itself not a carrier by rail under section 1(a)(1)(i) of the RRA but that it is under common control with one or more rail carrier employers, since [REDACTED] is the parent corporation of [REDACTED] covered rail carrier employers. In addition, the exhibit included with [REDACTED]'s letter indicates that a number of the officers and directors of [REDACTED] are also officers and/or directors of one or more of [REDACTED]'s railroad subsidiaries.<sup>1/</sup>

The question then becomes whether or not [REDACTED] provides service in connection with railroad transportation, and if so, whether such service is casual in nature.

In evaluating the information provided by [REDACTED], it is significant to note that the formation of [REDACTED] in [REDACTED] pre-dated [REDACTED] the enactment of the Railroad Retirement Act of 1937, the predecessor of the current RRA of 1974.<sup>2/</sup>

<sup>1/</sup> For example, [REDACTED] also serves as [REDACTED] of [REDACTED] of [REDACTED] is a [REDACTED] of [REDACTED]; and [REDACTED] is a [REDACTED] of the [REDACTED].

<sup>2/</sup> Cf. the Court's analysis in Standard Office Building Corp. v. United States, 819 F.2d 1371, 1379 (7th Cir. 1987), wherein the Court construed the phrase "service in connection with railroad transportation" in the definition of employer under the Railroad Retirement Tax Act (RRTA) (26 U.S.C. §3201 et seq.), which definition is essentially the same as that at issue herein. In addition, the fact that [REDACTED] was formed [REDACTED] before the RRA of 1937 is evidence that formation of the company was not an attempt to subvert the RRA and the RUIA by removing from coverage workers formerly covered by the Acts. Itel Corporation v. United States Railroad Retirement Board, 710 F.2d 1243, 1247 (7th Cir. 1983).

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In addition, [REDACTED] was established, not as a railroad,  
[REDACTED]  
[REDACTED].

[REDACTED] provides only "very limited administrative and tax services" for its railroad subsidiaries, which require that [REDACTED] staff spend "substantially less than [REDACTED] of [REDACTED] of their time on railroad business." [REDACTED] performs no services for any other railroad companies. Moreover, "substantially less than [REDACTED] of [REDACTED]" of the total corporate revenue of [REDACTED] is derived from its railroads. As pointed out in [REDACTED]'s letter, [REDACTED]'s business is [REDACTED].

It is apparent from the information provided that [REDACTED] provides no services to its railroad subsidiaries which are reasonably directly related, either functionally or economically, to the performance of obligations which its railroad subsidiaries have undertaken as common carriers by railroad. Cf. Railroad Retirement Board v. Duquesne Warehouse Co., 326 U.S. 446, 66 S. Ct. 238, 90 L.Ed. 192, 197-198 (1946). Moreover, even if it were found that [REDACTED] performs certain services in connection with railroad transportation, those services would be considered casual in nature under section 202.6 of the Board's regulations (20 CFR 200.6). It is therefore my opinion that [REDACTED] does not provide service in connection with railroad transportation and that it is not an employer under the RRA and the RUIA.

An appropriate Form G-215 giving effect to the foregoing is attached.

  
Steven A. Bartholow

Attachment

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